

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EARLANE POLYAK,

Plaintiff,

Civil Case No. 08-14906

vs.

JUDGE PAUL D. BORMAN
MAGISTRATE JUDGE MONA MAJZOUN

TENNESSEE ATTORNEY GENERAL,
et al.,

Defendants.

OPINION AND ORDER

**(1) ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
IN FAVOR OF GRANTING DEFENDANTS' MOTION TO DISMISS,**

**(2) REJECTING PLAINTIFF'S OBJECTIONS TO THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION, AND**

(3) DISMISSING THE ACTION

Before the Court is Plaintiff Earlane Polyak's objections to Magistrate Judge Mona K. Majzoub's May 5, 2009 Report and Recommendation (Dkt. No. 61) in favor of granting defendants Wayne Hulen's, Eloise Hulen's, Murry Lesnansky's, Gail Lesnansky's, Molly Hulen's, Roger Lesnansky's, Vicky Lesnansky's, Kyle Hulen's, Patricia Hulen's, Estate of Wilma Lesnansky's, Larry Joe Riddle's, Deborah Hulen Riddle's, Estate of Frank Hulen's, Estate of Dora Lee Hulen's, Glenn Hulen's (deceased), Van G. Hulen's, Nancy Hulen's, Robert Woods', Joyce Hulen Woods', Monte Helton's, and Janice Hulen Helton's Motions to Dismiss for lack of personal jurisdiction and for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(2) and 12(b)(3). (Dkt. Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14). The above-named defendants are collectively referred to as the "Served Defendants."

On May 14, 2009, Plaintiff filed a handwritten response to the Report and Recommendation, in which, among other things, she requested sixty days to respond to the Report and Recommendation. (Dkt. No. 62). On June 2, 2009, the Court granted Plaintiff an extension until June 22, 2009 in which to file her objections. (Dkt. No. 63). But, on June 23, 2009, Plaintiff filed a Motion for a Thirty Day Extension to Respond to the Report and Recommendation. (Dkt. No. 64). The Court granted Plaintiff's request and set an amended deadline of July 22, 2009 for Plaintiff to file objections. (Dkt. No. 65). Again, in violation of the Court's order, Plaintiff filed objections to the Report and Recommendation on July 23, 2009—one day past the second amended deadline. (Dkt. No. 66).

Setting aside Plaintiff's tardiness, the Court's *de novo* review of Plaintiff's objections, the Report and Recommendation, and the pertinent parts of the record under 28 U.S.C. 636(b)(1)(B) reveals that her objections are without merit.

Plaintiff contends: (1) that Plaintiff has been denied her constitutional right to due process under the Fifth and Fourteenth Amendments, (2) that this Court enjoys proper federal subject matter diversity jurisdiction under 28 U.S.C. §1391; and (3) that Magistrate Judge Majzoub incorrectly denied Plaintiff's Michigan residency. Plaintiff, however, again failed to establish that this Court has proper *personal*, as opposed to subject matter, jurisdiction, over Defendants or that the Eastern District of Michigan is the proper venue for this cause of action. Accordingly, this Court cannot adjudicate Plaintiff's claims against the Served Defendants, and they must, therefore, be dismissed.

In addition to the Served Defendants, Plaintiff's Complaint also names the Attorney General of Tennessee as a party to the suit. Plaintiff has failed to effect timely service on the Attorney General of Tennessee. *See* Fed. R. Civ. P. 4(e), (j). Therefore, Plaintiff's claims against the

Attorney General of Tennessee also are dismissed.

For these reasons, the Court:

- (1) **ADOPTS** the Magistrate Judge's Report and Recommendation in favor of granting Defendants' Motions to Dismiss;
- (2) **DENIES** Plaintiff's Objections to the Magistrate Judge's Report and Recommendation (Dkt. No. 61); and
- (3) **DISMISSES** the Served Defendants **WITH PREJUDICE**; and
- (4) **DISMISSES** the Attorney General of Tennessee **WITHOUT PREJUDICE**.

SO ORDERED.

S/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: August 21, 2009

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on August 21, 2009.

S/Denise Goodine
Case Manager